

D.U.P. NO. 94-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF EAST ORANGE,

Respondent,

-and-

Docket No. CI-93-74

HOSIA DANIEL REYNOLDS,

Charging Party.

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 16,

Respondent,

-and-

Docket No. CI-93-51

HOSIA DANIEL REYNOLDS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses charges filed against a public employer and majority representative. The charge against the union alleged that it failed to address a grievance, violating 5.4(b)(3) of the Act, and the charge against the employer alleged that it failed to address the circumstances of the charging party's temporary "removal" from the payroll, violating 5.4(a)(5) of the Act.

The majority representative processed a grievance on behalf of the charging party and others, which is proceeding to grievance arbitration, pursuant to the terms of the collective agreement. The employer is merely complying with an interest arbitration award. The Director dismissed the charges.

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Appearances:

For the Respondent City of East Orange
Green & Dzwilewski, attorneys
(Paul H. Green, of counsel)

For the Respondent PBA Local No. 16,
Franzblau, Dratch & Friedman, attorneys
(William A. Teltser, of counsel)

For the Charging Party,
Hosia Reynolds, pro se

REFUSAL TO ISSUE COMPLAINT

On January 26, 1993, Hosia Daniel Reynolds filed an unfair practice charge against PBA Local 16 alleging that it "failed to address" the grievance he presented on December 14, 1992. He also asserts that he was injured in a benefit football game in October

1992 and was hospitalized prior to the elimination of an unlimited sick leave benefit in an interest arbitration award. He asked the PBA to "have its attorney address the City of East Orange" and request a "show cause hearing." Charging Party contends that these acts violate subsection 5.4(b)(3)^{1/} of the Act.

On March 26, 1993, Reynolds filed an unfair practice charge against the City of East Orange alleging that it "failed to address" the circumstance of his "removal from the payroll." These acts allegedly violate 5.4(a)(5)^{2/} of the Act.

On March 11, 1993, the PBA filed a response acknowledging that Reynolds had presented a grievance on December 14, 1992, and that the grievance was processed to the Chief who denied it. The PBA then requested a hearing before the Police Commissioners on four similar grievances, including Reynolds'. No response was filed and on March 1, 1993, the PBA requested that the matter proceed to arbitration. (A copy of the letter requesting a list of arbitrators from the Commission was submitted.) The PBA also acknowledged that the unlimited sick leave benefit was removed in an interest arbitration award.

1/ This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

2/ This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

On April 13, 1993, Reynolds filed an amended charge^{3/} adding some facts and legal argument.

I dismiss both charges. In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the U.S. Supreme Court set the standard for determining whether a labor organization violated its duty of fair representation. The court held:

...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith.
[Id at 190, 64 LRRM 2376]

The Court also recognized that the individual employee does not have an absolute right to have his grievance taken to arbitration.

New Jersey has adopted the Vaca standard in duty of fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981).


Although Reynolds alleges that the PBA failed to address his grievance, it appears that Reynolds' grievance was processed through the negotiated grievance procedure and that the PBA is seeking to arbitrate the grievance along with three others raising substantially identical issues. Nothing more could be reasonably expected of the majority representative. Furthermore, the City and PBA jointly entered interest arbitration pursuant to the Act and must generally comply with the arbitration award. Accordingly, I decline to issue a complaint on the charge filed against the PBA.

^{3/} It is not clear that a copy of this amendment was filed with the respondent.

I also decline to issue a complaint on the charge filed against the City. While an unfair practice charge filed against an employer by an individual employee may be considered separately, the Commission has determined that the processing of a 5.4(a)(5) charge filed by an individual employee must be grounded on a claim that the majority representative, either alone or in collusion with the employer, violated the duty of fair representation. Since the facts alleged do not suggest that the PBA engaged in an unfair practice, I also decline to issue a complaint on the charge filed against the City. I note particularly that the City's participation in interest arbitration and compliance with the interest arbitration award is not an unfair practice.

The charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: August 6, 1993
Trenton, New Jersey